IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Bail Appl..No. 5828 of 2007()

CR. 179/03 OF CBCID& CR.116/03 OF ARYANAD POLICE STATION

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PETITIONER/A1

SUDHEESH KUMAR, S/O.BHASKARAN,
`BHASKARA VILASOM', VEEDU, KOTTAKAKOM MURI,
ARYANAD VILLAGE, NOW RESIDING AT `HARI VILASOM'
VEEDU, MUNDELA, ARUVIKKARA VILLAGE (A1).

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:

THE DETECTIVE INSPECTOR OF CRIME
BRANCH, CBCID, THIRUVANANTHAPURAM REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5828 of 2007

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Dated this the 26th day of October, 2007

O R D E R

Application for regular bail. The petitioner is the husband of the deceased woman. The deceased woman and their two children were found dead. It was revealed that the children were murdered and the wife had committed suicide. The incident of suicide and murder took place on 24.4.2003. Initially crime was registered under the caption 'unnatural death'. Later, an allegation under Section 302 I.P.C. was raised and the obvious allegation is only that the mother committed murder of the children before she herself committed suicide. Subsequently the postmortem revealed that there was evidence of sexual assault on one of the children. The allegation under Section 376 I.P.C. has since been raised. The investigators allegedly came across materials to suggest that the petitioner had harassed his wife with consistent demand for sale of an item of property belonging to her. In these circumstances allegations under Sections 306 and 498A I.P.C. have also been raised. The petitioner

was arrested on 20.9.2007 and he continues in custody from that date. Investigation is in progress.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He, who has been continuing in custody from 20.9.2007, may now be enlarged on bail, prays the learned counsel. There is not a semblance of an allegation, leave alone material, to suggest that the petitioner was in any way responsible for the alleged sexual assault on his own daughter. Therefore, virtually the petitioner is to answer, on the basis of the materials presently collected, the allegation under Sections 306 and 498A I.P.C. The suicide having taken place after seven years of the marriage, presumption under Section 113A of the Evidence Act can have no application.

3. The learned Prosecutor opposes the application, but evidently without conviction. Except that there has been some attempt to compel the wife of the petitioner for sale of an item of property, no tangible allegation is raised against him. The petitioner, who has been in custody from 20.9.2007, does not deserve to be detained any further for the completion of the investigation. I am satisfied that the petitioner can now be enlarged on bail, subject to appropriate terms and conditions.

4. In the result:

1) This application is allowed.

2) The petitioners shall be released on bail on the following terms and conditions.

(a) The petitioner shall execute a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to be satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 12 noon on all Mondays for a period of two months and thereafter as and when directed by the Investigating Officer in writing to do so.

(R. BASANT)
Judge

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